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PTO/SB/33 (07-05)

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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

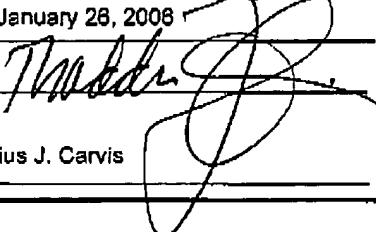
Docket Number (Optional)

GFT CTNG 1.2 US

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

January 26, 2006

on \_\_\_\_\_

Signature Typed or printed Thaddius J. Carvis  
name \_\_\_\_\_

Application Number

10/857,612

Filed

September 8, 2003

First Named Inventor

James A. Bolton, Jr., et al.

Art Unit

1762

Examiner

Parker

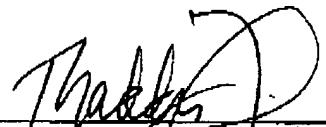
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96) attorney or agent of record. 26,110  
Registration number \_\_\_\_\_

Signature

Thaddius J. Carvis

Typed or printed name

703-737-7817

Telephone number

 attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 26,110

January 26, 2006

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

 \*Total of 2 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of :  
James A. BOLTON, Jr., *et al.* :  
Serial No. 10/657,612 : Examiner: Frederick John PARKER  
Filed: September 8, 2003 : Group Art Unit: 1762  
For: WOOD GRAINING PROCESS :

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Pre-Appeal Brief Request for Review**

Sir:

Kindly enter this Pre-Appeal Brief Request for Review in advance of Appellants' filing of a Brief on Appeal and conduct a review by a panel of examiners according to the Appeal Brief Conference Pilot Program.

This application has been rejected upon a clear factual deficiency in the rejection.

Below in less than five (5) total pages, appellants provide a succinct, concise and focused argument for which the review is being requested.

This paper is filed along with a notice of appeal.

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**(1) INTRODUCTORY COMMENTS**

Appellants have claims 1-3 pending.

An response to a non-final rejection was presented on September 29, 2005, following an interview with the examiner where clear claim language was agreed to.

An amendment after Final was presented on December 14, 2005, and entry was denied on December 27, 2005, although the examiner indicated that the amendment overcame claim objections only. Thus, the status of the amendment is unclear.

A Supplemental Response to Final Office Action was submitted on December 27, 2005, but no action has been taken on the claims presented therein.

It is believed that the comments herein can apply to any of the sets of claims because the basis for the rejection is an inaccurate reading of the reference that was newly cited in the Final Office Action, namely U. S. Patent No. 3,936,541 to Plowman, et al.

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## (2) DISCUSSION OF CLEAR FACTUAL ERRORS

Appellants refer the examiners to both of the responses after Final noted above and incorporate them by reference. The points below address principally the clear factual error.

The claims have been rejected for obviousness under 35 USC §103 based on Pittman in view of Plowman, *et al.* Appellants refer the examiners to the above noted papers for the errors in the rejection based on the combination, but note that the combination is especially flawed as discussed herein because the Plowman, *et al.*, reference has been misread and misapplied.

The Plowman, *et al.*, reference calls for a top coat over the accent coat which is described in the following terms:

*Since the highest contact pressure occurs at the upper parts of the ridges R virtually all of the accent or pigmenting agent will be removed or picked up therefrom.* Along the valley side walls, varying amounts of material are picked up by roll 38, and since the contact pressures vary from the tops of the ridges down into the valleys, there will be corresponding graduations in the amounts of pigmenting material left on the panel surface as illustrated in FIG. 7. (col. 6, lines 49-58; emphasis added)

First, applicants point out that the drawing of the patent in Fig. 7 of the Plowman, *et al.*, reference does not show a coating with any thickness on the highest surfaces said by the reference to be wiped clean. It describes picking up "all" of the coating on the high points. (col. 6, line 51)

Neither Fig. 7 nor any other part of the Plowman, *et al.*, disclosure can be read to show or describe coating thickness, especially on the highest surfaces. The reference states, contrary to its treatment in the Office Action that there is no coating on high surfaces.

The examiner has referred to Fig. 7, but this artistic rendering does not define a coating at all much less show a thickness for it. The lines in the drawing are not defined as denoting a coating on the highest ridges. The description of Plowman, *et al.*, does not indicate how the coating is delineated in the drawings. Is it the white layer defined by top and bottom black lines or only the top black line? If

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the latter, it is again not clear what the thickness at any point is. The artist used a black line to define the upper edge of the white zone.

The drawing is not precise, and the interpretation of it by the examiner is inconsistent with the description. The drawing must be viewed in connection with the description as quoted above "*all of the accent or pigmenting agent will be removed or picked up*" from the ridges R. A very small amount unintentionally left on the ridges would not be effective for coloration for applicants' purposes or as a finish coat – this requires the addition of a top coat. The process of the invention, on the other hand, is complete after the two coats.

Following the application of the accent coat, the Plowman, *et al.*, reference calls for:

The panel is then conveyed to a topcoat applicator ... *to provide the panel with a transparent protective coating* and accordingly a clear plastics finish compatible with the previously applied accent or pigment material.... The average film thickness will usually be in the order of 0.3 mils. ... ( col. 7, lines 4-22; emphasis added)

The use of such a top coat is not required by the present invention. The second, graining coat provides not only coloration but a finish coat.

The process of the invention utilizes two complementarily pigmented coatings. Both are water based and easy to use, but are together highly durable.

The two colors for the two coats of the inventive process are necessary for the process and nothing like this is suggested by the prior art. The second or graining coat changes the color provided the base coat and highlights the ticks, without simply filling them in with a dark, opaque color. The overall color is that of the desired wood.

The Pittman, *et al.*, reference certainly does not show a second coat as claimed in combination with a first coat to achieve the objectives of this invention. Appellants discussed Pittman, *et al.* in their specification as being for a different process than applicants. Appellants have noted that Pittman, *et al.*, uses a dry buffing compound and does not provide a complete product after the prefinishing, but needs to further finish and then overcoat with a glaze. The powdery buffing compound of Pittman, *et al.* makes final coating strength difficult to come by.

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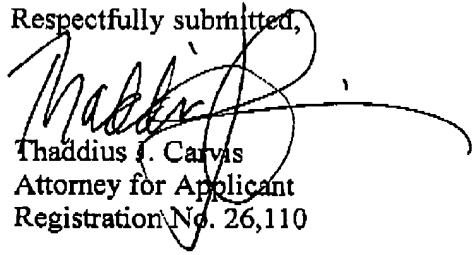
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The coating of Pittman, *et al.*, is different in composition and purpose from what is claimed here. Thus, it would not be obvious for the person of ordinary skill in the art to optimize it by using a low application rate to effect the claimed purposes of *spreading the graining coat to color at least a majority of texture recesses in the substrate, while retaining a coating of the darkening graining coat on the textured surface, which together with the base coat color, provides a natural coloration of a selected wood type.*

In applicants' claimed process, the graining coat is selected to be used with a specific color base coat to simulate wood coloration and graining and provide a durable finish. This is not rendered obvious by the teachings of Plowman, *et al.*, taken in any combination with Pittman, *et al.*

Accordingly, appellants have shown clear factual error in the rejection of the claims, and the claims are commensurate in scope with the improvement applicants are arguing. Accordingly, allowance of all claims is believed in order and such action is earnestly solicited.

Respectfully submitted,



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